IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.9263 of 1990

Date of Decision: November 15, 2007

Jit Singh and another .....Petitioners

Versus

The Punjab State Co-operative & another .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.DS Patwalia, Advocate for the petitioners.

Mr.Arun Nehra, Advocate for respondent No.1.

S. D. ANAND, J.

1. Petitioner No.1 was in employment of Jalandhar Co-operative Cannaries Ltd., Jalandhar. Petitioner No.2 was also in employment of that Institution. In the year 1973, the Markfed Co-operative Cannaries, Jalandhar merged with the Punjab State Co-operative Supply & Marketing Federation Limited Chandigarh w.e.f. 25.11.1972 vide order dated 7.8.1973. The petitioners, on that account, became employees of the Markfed. On account of indictment for defalcation, penalty of compulsory retirement was imposed upon them. The pure and simple plea of the petitioners is that the impugned penalty deserves to be invalidated inasmuch as it had been imposed by the Managing Director who was not competent to impose it. The plea, in the context, is that in terms of the Punjab State Supply and Marketing Co-operative Service (common cadre) Rules, 1967, it is the

Administrative Committee which is competent to make appointments and to impose the indicated punishment.

2. The respondent – Markfed re-iterated the correctness of the impugned penalty by averring that the petitioners are not governed by the Common Cadre Rules but by the Model Standing Orders and other industrial laws which are applicable to the persons of the category to which the petitioners belong. The respondent also raised a preliminary objection to the maintainability of the present petition on the plea that the petitioners being workmen within the ambit of the Industrial Disputes Act, have an alternative and equally efficacious remedy available to them under that Act.

3. I have heard Mr.DS Patwalia, learned counsel for the petitioners, Mr.Arun Nehra, learned counsel for respondent No.1 and have carefully gone through the file.

4. Insofar as the preliminary objection is concerned, it only deserves to be noticed to be negatived. There is plethora of law on the point that a writ plea would be competent even in the face of availability of an alternative remedy. The plea shall stand negatived accordingly.

5. Insofar as the petitioners are concerned, they made a precise averment in the petition that they are governed by the Common Cadre Rules. Rule 1.3 thereof reads as under:

> "1.3. These rules shall apply to the employees working in the Punjab State Co-operative Supply & Marketing Federation Limited, and to such employees of the Co-operative Marketing/Processing Societies and the District Wholesale Supply and Marketing Co-operative Societies as may be declared suitable as a result of screening conducted in

pursuance of the provisions of clause (a) & (d) of rule 2.2A infra or otherwise.

Provided that in case of the employees appointed by transfer from Government Departments, these rules shall apply only to the extent specified in their terms and conditions of deputation agreed upon with the Government Department concerned.

Provided that nothing in these rules shall effect the application of any other law, statutory rule or regulation for the time being in force."

6. In an endeavour of resistance, all that the respondents averred was that the petitioners are not governed by the Common Cadre Rules and are instead governed by the Model Standing Orders. The respondent-Corporation has not indicated any premise on the basis whereof it could oust the applicability of the Common Cadre Rules. It also did not indicate the exact connotation of the Model Standing Orders. The rule quoted in para 5 of this judgment, is categorical in the matter of applicability to the petitioners. In the light of the above quoted rule, the inapplicability of the Common Cadre Rules could be pleaded only if the orders regarding the transfer of the petitioners to the Markfed would have indicated any such thing in the terms and conditions governing their transfer. It is not the plea on behalf of the contesting respondent that the terms and conditions governing the merger indicated above contained any such stipulation which would be supportive of contesting respondent's plea of inapplicability of Common Cadre Rules.

7. It may be noticed that a similar controversy arose before this

Court in R.S.A.No.1948 of 1985 (Narinder Kumar Nanda Versus The Punjab State Cooperative Supply and Marketing Federation Ltd.). In that case, the competence or otherwise of the Managing Director of Markfed was in issue. The learned Trial Court and also the learned First Appellate Court, in a concurrence of views, held that the Managing Director of the Markfed was not competent to terminate the service of that employee (Field Assistant in the employment of the Markfed). In R.S.A., this Court affirmed that finding and held that it was only the Administrative Committee which was competent to dismiss the employee.

8. In the light of the foregoing discussion, the writ plea succeeds. The writ petition shall stand allowed. The impugned order, Annexure P13, by which a penalty of compulsory retirement was imposed upon the petitioner, shall stand quashed. However, it shall not debar the passing of an appropriate order afresh by the Competent Authority. Of course, while passing that order, the Competent Authority ought to notice the length of service rendered by the petitioners and also the fact that the petitioners have been out of job since 1990.

(S. D. ANAND)
JUDGE

November 15, 2007
SRM

Note: Whether referred to reporter ? Yes/No